

APR 20 2006**CATHY A. CATTERSON, CLERK**
U.S. COURT OF APPEALS**NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff/Appellee,****V.****GERVER EVENILSO-CRUZ,****Defendant/Appellant.****No. 05-10471****D.C. No. CR-04-2574-TUC-RCC****MEMORANDUM***

**Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding**

Submitted April 7, 2006
San Francisco, California**

Before: SILER,* BERZON, and BYBEE, Circuit Judges.**

After being convicted of second-degree criminal sexual assault, Evenilso-Cruz was removed from the United States in 2004. He subsequently returned to

*** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.**

**** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).**

***** The Honorable Eugene E. Siler, Jr., Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.**

the United States and was convicted of illegal reentry under 8 U.S.C. § 1326. On June 14, 2005, the district court considered many mitigating factors and ultimately sentenced Evenilso-Cruz to thirty months in custody and three years of supervised release. Evenilso-Cruz appealed his sentence.

After *United States v. Booker*, 543 U.S. 220 (2005), this Court reviews a district court's sentence for "unreasonableness." *United States v. Cantrell*, 433 F.3d 1269, 1279 (9th Cir. 2005). Congress enumerated seven factors, in 18 U.S.C. § 3553(a), which a court is to consider when determining the reasonableness of a sentence. The district court in this case expressly considered all seven factors when imposing Evenilso-Cruz's sentence. Nevertheless, Evenilso-Cruz argues that his sentence is unreasonable because the district court failed to exercise its discretion and simply sentenced him as it would have under the pre-*Booker*, mandatory sentencing regime. However, the record contradicts Evenilso-Cruz's claim.

Not only did the district court advise Evenilso-Cruz, on more than one occasion, that the sentencing guidelines were merely advisory, but the district court expressly considered all statutorily required mitigating factors and ultimately imposed a sentence far below that which the sentencing guidelines suggested. Accordingly, Evenilso-Cruz's claim that the district court failed to exercise its

discretion, and therefore imposed an unreasonably high sentence, is without merit.

The district court's decision is **AFFIRMED**.